

# California's Corporate Grid Giveaway

Recent legislation revives a disastrous plan to merge California's electricity system with other power networks in the American West. While shrouded in the neutral language of cooperation and economies of scale, the plan would likely result in a takeover of the grid regulation by a country club of private utility interests. Regionalization would gut public oversight of electricity while giving outsized power to states with entrenched fossil fuel industries. As we have seen in other parts of the country that have regionalized their electricity systems, this change would undermine climate regulations, raise energy prices, and outsource jobs to states with lower wages and weaker labor standards.

## Regionalization Is the Latest Attempt to Deregulate California's Grid

The latest plan to turn the management of the California electricity grid over to a private, multi-state bureaucracy reflects a long-standing dream of utility corporations. During the Gilded Age, electric utilities formed large, complex, multi-state holding companies. The size, lack of transparency, and fundamentally interstate nature of these corporations made them virtually impossible to regulate by state government agencies charged with ensuring that consumers received fair prices from corporations granted legal monopolies.<sup>1</sup> Breaking up these utility holding companies was a major goal of the New Deal, ranging from federal investment in public electricity to securities and financial disclosure laws.<sup>2</sup> Faced with the existential possibility of public electricity, private utility corporations accepted a new role as monopolies subject to oversight and regulation by state utility commissions.<sup>3</sup>

Dramatic cost overruns from private utility projects, rising fuel costs, and a deregulatory ethos following the 1973 oil embargo inspired plans to remove regulation from electricity.<sup>4</sup> During the 1990s, legislative measures deregulated the electricity sector and encouraged the formation of multi-state business associations called Regional Transmission Organizations (RTOs).<sup>5</sup> True deregulation of electricity is impossible;<sup>6</sup> what these changes really did was hand over responsibility for managing the grid from state governments to the very private utilities profiting from selling power. In California, these policy decisions culminated in the catastrophic blackouts and price hikes caused by market manipulation in the Enron era.<sup>7</sup>

Despite the manifest failures of the deregulated electricity system — ranging from reduced reliability to higher consumer prices — many political leaders continue to pursue further deregulation. Profit-motivated utilities will not abandon the dream of going multi-state and once again freeing themselves from state regulators.<sup>8</sup> The latest such proposal would authorize the California Independent System Operator (CAISO) to combine with grid authorities in up to 10 other Western

states, forming a multi-state RTO.<sup>a</sup> It is a resurrection of a failed attempt in 2018 by the same legislators, with cosmetic alterations.<sup>9</sup> Proponents have spent years describing regionalization of the electricity system as “inevitable,” even though California legislators continue to reject these proposals.<sup>10</sup> In fact, the opposite may be true: The manifest climate and cost failures of RTOs on the East Coast have led many states to consider leaving these organizations.<sup>11</sup>

### *Multi-state Regional Transmission Organizations (RTOs) are an attack on democracy*

Governance of RTOs varies significantly, but they are often explicitly anti-democratic in order to guarantee outsized power for industry.<sup>12</sup> Typically, the boards of multi-state RTOs are elected by the RTO “members” — the private corporations that generate, move, and sell electricity<sup>13</sup> — rather than by democratically elected officials.<sup>14</sup> State officials are relegated to an advisory role,<sup>15</sup> and consumer advocates hold little to no voting power in most RTOs, with the greatest sway they hold in any RTO at 8 percent.<sup>16</sup> CAISO, however, is currently governed by a board appointed by the California governor and confirmed by the state senate.<sup>17</sup> This means that while CAISO is far from perfect, unlike most other RTOs, it is politically accountable and functions much like a staff-led government agency.<sup>18</sup> (A full transition to a public entity would be one potential improvement; another would be transitioning to public power.)

Regionalization would almost certainly reduce the role of staff in CAISO’s decision making and transform CAISO into a membership club for utilities.<sup>19</sup> Publicly elected state officials typically have limited formal input in multi-state RTOs<sup>20</sup> and struggle to regulate transactions that happen outside of their jurisdiction. Additionally, federal law treats the governance of RTOs, which are policymaking bodies, the same as private utilities.<sup>21</sup> This means that federal regulators cannot regulate the corporate governance or administrative structure of RTOs.<sup>22</sup>

While regionalization proponents acknowledge that governance is an issue that needs to be ironed out, any proposed RTO would need buy-in from utilities and would therefore have to appease private interests. For example, PacificCorp, a utility operator servicing the West Coast, refuses to join an RTO that does not have “independent governance.”<sup>23</sup> This dynamic extends to the operation of multi-state RTOs after formation. RTO boards are frequently driven by fear that transmission companies may withdraw and thus try to appease these corporations.<sup>24</sup>

In contrast, state utility commissions lose authority when they join multi-state RTOs,<sup>25</sup> frequently relegated to advisory roles while private participants act as the authorities.<sup>26</sup> The increased complexity of multi-state entities also gives private utilities significantly more leverage to thwart regulation by operating across multiple jurisdictions.<sup>27</sup> While states can theoretically force their utilities to withdraw from RTOs, doing so tends to be nearly impossible in practice, as it can be very challenging to rebuild the complex engineering, technical, and oversight functions that RTOs provide. In practice, unwinding the changes brought by RTO membership proves to be very difficult.<sup>28</sup>

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a CAISO is technically organized as a Federal Energy Regulatory Commission (FERC) approved RTO, but the single-state jurisdiction of CAISO makes it fundamentally different from multi-state RTOs. Texas’s RTO (ERCOT) is also single-state but uses its independence to advance disastrous free-market governance.

RTOs are overseen by the Federal Energy Regulatory Commission (FERC), but courts have routinely limited FERC's ability to intervene in RTO rate setting.<sup>29</sup> And while FERC commissioners may want to adopt the mantle of an apolitical market administrator,<sup>30</sup> FERC makes decisions that directly advantage some resources over others.<sup>31</sup> FERC has taken increasingly pro-fossil fuel stances, perhaps because FERC is funded by revenues from the industries that it regulates and is even empowered to set its own salaries.<sup>32</sup> FERC appears to have rejected only a tiny number of pipeline applications, despite frequent legal challenges that find that FERC is inappropriately granting permits.<sup>33</sup> FERC also frequently sides with fossil fuel interests in RTO governance disputes.<sup>34</sup>

## The Same Green Groups That Advanced Deregulation in the 1990s Are Back to Support Regionalization

In the 1990s, proponents of deregulation touted its environmental benefits (largely driven by a switch from coal to gas) and sought the approval of well-funded green groups, many of which ultimately supported deregulatory grand bargains in exchange for small concessions on energy efficiency.<sup>35</sup> The Natural Resources Defense Council (NRDC) backed a proposal for a Western power merger by Enron, with staff member Ralph Cavanagh claiming that, "On environmental stewardship, our experience is that you can trust Enron."<sup>36</sup> Today, the group supports CAISO deregulation, with Cavanagh saying, "the most important thing we have to do now is to get the California legislature to open a path to fully independent governance for the California ISO."<sup>37</sup>

While green groups pitched the environmental potential for deregulation to close uneconomic coal plants, the architects of deregulation have remained explicit that their key goal is to prevent states from using utilities to pursue "political agendas."<sup>38</sup> Research found that a decade into the experiment, deregulation of grid systems had not delivered on its environmental promises.<sup>39</sup> Deregulation did, however, spark a mad "dash to gas" premised on low natural gas prices in the early 1990s, building an unprecedented amount of new gas-fired power plants.<sup>40</sup> This huge expansion of natural gas capacity (also enabled by a technological improvement in gas power plants) laid the groundwork for the fracking boom a decade later.<sup>41</sup>

### *Vague commitments will not protect critical climate regulations*

Today, many of the same organizations that supported disastrous deregulation schemes in the 1990s have lined up to back new regionalization proposals. These environmental groups claim that language in the bill surrounding conflicts of interest, environmental requirements, and sovereignty will keep utilities in check post-regionalization. However, RTOs are fundamentally business-first entities, accountable to their "member utilities" before any public authority.<sup>42</sup> Turning the keys to California's grid over to a multi-state body run by private corporations would curtail California's leadership in green energy. California's interests could be relegated to just a single voice on an advisory board, equal in representation to much smaller states with entrenched fossil fuel industries like Wyoming.<sup>43</sup>

For example, the new bill includes language meant to mollify environmental objections to the regionalization scheme, such as asserting that the regionalized market will not undermine California's climate policies.<sup>44</sup> Unfortunately, requirements are only applicable "to the fullest extent possible consistent with federal law."<sup>45</sup> The problem with interstate RTOs is that their interstate

nature makes state-level regulations incredibly vulnerable to challenges on the basis of their interference with federal law.<sup>46</sup>

Incorporation into RTOs has also opened state policy to legal challenges on the grounds that it supersedes federal authority.<sup>47</sup> For example, a 2016 court ruling overturned Minnesota's restrictions on new coal power imports on the grounds that the ban is interfering with interstate commerce (as part of an RTO).<sup>48</sup> State laws that mandate renewable energy procurement may prove to be entirely incompatible with the RTO system.<sup>49</sup>

### *RTOs have a track record of dismantling climate policy*

RTOs stall as much as possible, especially when it comes to new resources that threaten the profitability of existing assets.<sup>50</sup> These corporate-dominated organizations tend to be hostile to new technologies such as renewables and energy storage, using their power to protect incumbent investments through favorable market rules.<sup>51</sup> Most RTOs have been very hostile to rules that would allow more energy storage, largely because storage would undercut the need for natural gas.<sup>52</sup> CAISO has been significantly more willing than other grid operators to incorporate storage and demand response.<sup>53</sup> As a result, CAISO is less reliant on fossil fuels than any other RTO.<sup>54</sup>

In the Northeast, RTOs have responded to state Renewable Portfolio Standards (RPS) by creating rules that “zero out” the impact of state renewable energy policy on regional energy markets.<sup>55</sup> These RPS policies play a critical role in decarbonization; according to a 2019 Department of Energy report, “Roughly half of all growth in U.S. renewable electricity (RE) generation and capacity since 2000 is associated with state RPS requirements.”<sup>56</sup> It is estimated that state RPS policies drove 60 to 80 percent of all solar photovoltaic installation by 2017.<sup>57</sup> Legal authority over capacity, but not operation, lies with states.<sup>58</sup> This means that even though states can still mandate that renewable energy is built, there is no way to guarantee that it is turned on, even when the cost to do so is lower than fossil fuel generation.<sup>59</sup>

Power lines are critical to the success of renewables, but a regionalized market that abdicates decision making to fossil fuel interests is a step in the wrong direction. That is because a Western RTO is not the biggest impediment to new transmission infrastructure.<sup>60</sup> Generators are incredibly dependent on transmission for competitive success, often resulting in very strong resistance to new transmission plans.<sup>61</sup> Otherwise-profitable wind and solar projects are often blocked by transmission planning authorities that refuse applications to join the grid.<sup>62</sup>

### *Opening California's electricity market would allow dirty imports to displace in-state renewables and reduce green jobs*

RTO proponents claim that other Western states now have clean energy laws that are comparable to California's, and that the quality of energy jobs in other states is also comparable.<sup>63</sup> Even ignoring deep red states like Wyoming and Idaho that have no renewable energy standards (Utah has a “goal”),<sup>64</sup> the regional track record on climate regulation is nowhere close to California's. Arizona only has renewable standard set at 15 percent,<sup>65</sup> and Montana recently repealed its weak clean energy policy.<sup>66</sup>

Enforcement and details of these climate policies vary significantly, and many states include dirty sources of power in their definition of “renewable.”<sup>67</sup> For example, Nevada's recently elected

Republican governor embraces natural gas and wants to make the state a “regional leader in exporting energy.”<sup>68</sup> Nevada’s utility has recently proposed a significant natural gas buildout, including 400 megawatts of new gas capacity.<sup>69</sup>

California’s climate policies are dramatically more effective than those of other states. The other 10 states<sup>b</sup> that could be part of a Western RTO produce power from much dirtier sources.<sup>70</sup> Since 2014, California has increased its share of electricity from wind, solar, and geothermal from 20 percent to 44 percent, while its share of electricity generated from fossil fuels fell from 62 percent to 48 percent. Meanwhile, the other Western states increased the share of wind, solar, and geothermal only from 8 percent to 20 percent.<sup>71</sup>

A CAISO report found that regionalization would reduce renewable energy jobs in California by increasing reliance on imported electricity.<sup>72</sup> That has led many groups, including the Building Trades Council, to condemn the plan because it would outsource jobs.<sup>73</sup> The regionalized power market would essentially pit California workers against those in nearby states with more dangerous workplace conditions.<sup>74</sup>

## Less Regulation Means More Expensive Electricity

What California loses in oversight is supposed to be made up for by reduced electricity costs brought about by competition across a larger region. Evidence from more than 20 years of the deregulation experiment finds that competition does not reduce electricity prices.<sup>75</sup> Failure to check market power has meant higher wholesaler prices, since mark-ups from generators exceed efficiency gains. This has meant that prices in deregulated wholesale electricity markets rose faster than in their regulated counterparts.<sup>76</sup>

Multi-state RTOs frequently pursue policies that primarily serve to funnel money to their member utilities. Policies are often designed to achieve nebulous goals like “investor confidence,” a catch-all for giving more money to utilities. Sometimes self-dealing happens under the guise of reliability. For example, the RTO that administers New England’s grid approved \$150 million a year in “winter energy security” payments to subsidize uneconomic fossil fuel plants.<sup>77</sup> In the Mid-Atlantic’s PJM market, rules designed to boost long-term stability and investor confidence likewise raised power costs. Excessive investor confidence lets utilities build a truly astounding amount of unnecessary natural gas infrastructure, wildly exceeding reliability targets.<sup>78</sup>

California’s energy markets have continued to be the target of manipulation even after Enron. Transmission speculation already costs Californians an average of \$76 million annually,<sup>79</sup> and from 2005 to 2016 federal regulators fined banks and utilities more than \$500 million for running afoul of electricity market speculation rules in California.<sup>80</sup> More regionalized markets, with more companies selling power, are more likely to be vulnerable to manipulative speculation that can raise prices.<sup>81</sup>

State regulators and effective market oversight are critical to detecting suspicious bids.<sup>82</sup> Turning these responsibilities over to a multi-state RTO with participant-friendly rules and increasing the complexity of the market would be disastrous. During a 2020 heat wave, CAISO used its latitude to shut down speculation bids that were detrimentally impacting CAISO’s ability to maintain reliability.<sup>83</sup>

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<sup>b</sup> These states are Arizona, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming.



Energy traders criticized the move, but CAISO is ultimately accountable to Californians, not “market participants.”<sup>84</sup> State regulators recently opened an investigation into possible energy market manipulation in December 2022 that tripled electricity prices relative to a year before.<sup>85</sup>

While FERC requires RTOs to engage in market oversight, it is up to those RTOs (and by extension their member utilities) to decide how to meet that requirement. For example, PJM employs an independent monitor to comply with FERC’s oversight mandate, but adopting the monitor’s recommendations is voluntary, and PJM adopted less than half of all suggestions from 1999 to 2015.<sup>86</sup> FERC itself has a limited role in RTO oversight. That is because case law grants a high degree of deference to decisions made by RTOs; rates, for instance, can only be changed if they are “entirely outside the zone of reasonableness.”<sup>87</sup> California regulators have expressed wariness about regionalization’s impact on consumers, with the state’s Public Utilities Commission recommending that CAISO conduct additional studies to evaluate the impact of regionalization on costs and reliability for Californians.<sup>88</sup>

## Conclusion:

Legislative proposals to regionalize CAISO amount to a blank check for deregulation, stripping away the last vestiges of public oversight over a market vulnerable to abuse and manipulation. These plans will not accelerate the decline of fossil fuels but will instead allow unelected boards to dismantle and undermine climate policies.

The resistance of private utilities to climate action and the failure of free market electricity highlights the need for more dramatic action. Publicly owned electricity has a long track record in the United States and is essential in ensuring that decisions about the future of the grid respond to public needs, not corporate profit. Instead of pursuing more deregulation, it is time to take the path not taken. The Enron crisis could have been prevented or halted by a public takeover of the utilities and generators.<sup>89</sup> In fact, none of the public utilities in California faced shortages during 2000 and 2001.<sup>90</sup> Instead of creating complex multi-state deregulatory schemes, lawmakers should pursue policies that bring power systems under public control.

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